

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

BILLY RAY GRAYS

PETITIONER

No. 4:21-cv-00356 LPR/PSH

DEXTER PAYNE, Director,
Arkansas Division of Correction (“ADC”)

RESPONDENT

FINDINGS AND RECOMMENDATION

INSTRUCTIONS

The following recommended disposition has been sent to United States District Judge Lee P. Rudofsky. You may file written objections to all or part of this Recommendation. If you do so, those objections must: (1) specifically explain the factual and/or legal basis for your objection; and (2) be received by the Clerk of this Court within fourteen (14) days of this Recommendation. By not objecting, you may waive the right to appeal questions of fact.

DISPOSITION

Petitioner Billy Ray Grays (“Grays”) filed this petition for writ of habeas corpus on May 3, 2021. He also filed a motion for leave to proceed *in forma pauperis* that same day. The Court denied Grays’ motion to proceed *in forma pauperis* on May 6, 2021, finding he has the means to pay the five dollar filing fee.

Docket entry no. 3. The Court directed Grays to pay the filing fee by the close of business on June 8, 2021 and notified him failure to pay would result in a recommendation that the case be dismissed without prejudice. Shortly thereafter, Grays filed a notice indicating that he had requested that \$5 be paid to this Court. Docket entry no. 4. In response, the Court entered an Order noting that Grays had not paid the fee but also noting the request he had made. The Court granted him additional time, until July 19, 2021, in which to pay the filing fee.

Grays has since filed a variety of pleadings, including three motions for ruling on the pleadings. He has not paid the filing fee, however, as directed by the Court. Under these circumstances, the Court recommends that Grays' petition should be dismissed without prejudice for failure to comply with Local Rule 5.5(c)(2) and failure to respond to the Court's orders. *See Miller v. Benson*, 51 F.3d 166, 168 (8th Cir. 1995) (district courts have inherent power to dismiss *sua sponte* a case for failure to prosecute, and exercise of that power is reviewed for abuse of discretion).

Pursuant to 28 U.S.C. § 2253 and Rule 11 of the Rules Governing Section 2554 Cases in the United States District Court, the Court must determine whether to issue a certificate of appealability in the final order. In § 2254 cases, a certificate of appealability may issue only if the applicant has made a substantial showing of

the denial of a constitutional right. 28 U.S.C. § 2253(c)(1)-(2). The Court finds no issue on which petitioner has made a substantial showing of a denial of a constitutional right. Thus, the Court recommends that a certificate of appealability be denied.

IT IS SO RECOMMENDED this 11th day of August, 2021.



UNITED STATES MAGISTRATE JUDGE